REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1757** **(CTA Case No. 8738)**
	Present:
-versus-	Del Rosario, *P.J.*, Castañeda, Jr., Uy, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, *and* Manahan, *JJ.*
SUGAR CRAFTS, INC. Respondent.	Promulgated: **MAY 06 2019** 2:12 p.m.

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DECISION

CASTAÑEDA, JR., J.:

Before the Court *En Banc* is a Petition for Review filed by the Commissioner of Internal Revenue (CIR) under Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) in relation to Rule 43 of the Rules of Court assailing the following:

1. August 16, 2017 Decision[1] of the CTA Third Division[2] the dispositive portion of which reads:

   "Absent the necessary issuance of a new LOA specifically designating RO Sunga to conduct the audit and examination of petitioner's books of accounts and accounting records for TY 2009, RO Sunga acted without authority when he conducted the audit investigation of petitioner's books. Accordingly, the assessment arising therefrom is a nullity. A void assessment bears no valid fruit.

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[1] Annex A, Petition for Review, Rollo, pp. 19-48.

[2] Penned by Associate Justice Lovell R. Bautista with the concurrence of Associate Justices Esperanza R. Fabon-Victorino and Ma. Belen M. Ringpis-Liban.

In view of the foregoing, the Court will no longer discuss the other issues raised in the present petition.

WHEREFORE, premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, the assessments for deficiency income tax in the amount of Php7,393,456.66, for value-added tax in the amount of Php10,792,064.60, for expanded withholding tax in the amount of Php394,763.77, for improperly accumulated earnings tax in the amount of Php1,162,893.82, all inclusive of interest and surcharges for taxable year 2009; and the compromise penalty in the amount of Php20,000.00; are **CANCELLED** and **SET ASIDE**.

SO ORDERED."

2. December 4, 2017 Resolution[3] denying the CIR's Motion for Reconsideration for lack of merit.

THE FACTS

The facts, condensed from the appealed decision and the records, are narrated below:

The Parties

Petitioner is the Commissioner of the Bureau of Internal Revenue (BIR), the government agency charged with the assessment and collection of all internal revenue taxes, fees, charges, and the enforcement of all forfeitures, penalties and fines connected therewith.[4]

Respondent Sugar Crafts, Inc. (SCI) is a corporation organized and existing under the laws of the Philippines, with registered address at J.A. Development Corporation Compound, E. Rodriguez Jr. Avenue, Pasig City. Its primary purpose is "[t]o manufacture, buy, sell, export, import, deal in, and to engage in, conduct and carry on the business of manufacturing, buying and selling, and dealing in goods, wares and merchandise, of every class, and description as may be permitted by the laws of the Philippines, such as but not limited to sugar flowers and other cake decoration materials, except drugs and cosmetics, and to act as agent, except insurance, representative of attorney-in-fact of any individual, association, partnership, corporation or any other entity, local or foreign, in any manner and for any purpose consonant with and consistent with the purposes of this Corporation."[5] *ge*

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[3] Annex B, Petition for Review, Rollo, pp. 51-56.
[4] Decision, Rollo, p. 20.
[5] *Id.*; Exhibit P-2, Division Docket, Vol. 2, p. 838.

Relevant Facts

On August 3, 2010, respondent taxpayer received Letter of Authority No. 2009-00032527 (LOA No. 32527) dated June 24, 2010, signed by then Assistant Regional Director Jonas DP. Amora (Mr. Amora) of Revenue Region No. 7 (RR No. 7) for Regional Director Antonio Montemayor. The LOA authorized Revenue Officer (RO) Ricardo Cruz, Jr. (RO Cruz) and Group Supervisor (GS) Lino Amatorio, of Revenue District Office No. 41-Mandaluyong City (RDO No. 41), to examine the taxpayer's books of accounts and other accounting records for all internal revenue taxes for taxable year (TY) ending in December 31, 2009.

On November 11, 2010, respondent received LOA-041-2010-00000037 SN: eLA201000026203 dated October 27, 2010, signed by Mr. Amora as Officer-in-Charge (OIC)-Regional Director of RR No. 7, authorizing the same ROs identified in LOA No. 32527 to conduct audit investigation of its tax liabilities for TY 2009. The LOA bears a marking which indicates that it "is a converted [electronic LOA (eLA)] from a previously issued eLA/LA/TVN No. [LOA No. 32527] dated June 24, 2010 pursuant to [Revenue Memorandum Order (RMO)] No. 69-2010."[6]

More than year later, on December 5, 2011, Ms. Norma P. Ceroma, (Ms. Ceroma), Assistant Chief of the Assessment Division of RR No. 7, forwarded to RDO No. 43-A Pasig City (RDO No. 43A) the entire docket bearing the TY 2009 tax case of respondent, by virtue of the indorsement issued by Revenue District Officer Isabel A. Paulino (RDO Paulino) of RDO No. 41. The indorsement of RDO Paulino was pursuant to a memorandum dated October 18, 2011 signed by RO Maria Dalisay S. Co, stating that petitioner is already under the jurisdiction of RDO No. 43A.[7]

Thereafter, a Memorandum of Assignment (MOA) No. 043A-0000559 dated December 7, 2011 was issued by RDO Florante R. Aninag (RDO Aninag) of RDO No. 43A to RO Delfin C. Sunga (RO Sunga) and GS Chito T. Cabel (GS Cabel), authorizing them to continue the audit and investigation pursuant to LOA No. 32527, to replace the previously assigned revenue officers. Respondent taxpayer was then informed of said replacement in a letter received on January 11, 2012.[8]

On the basis of the MOA, RO Sunga conducted his audit and, thereafter, recommended the issuance of the Preliminary Assessment Notice (PAN) and Assessment Notice with Formal Letter of Demand.[9]

On July 26, 2012, respondent received a Notice of Informal Conference (NIC) dated July 24, 2012 issued by RDO Aninag, pursuant to LOA-041-

[6] Decision, Rollo, p. 21.
[7] *Id.*; Petition for Review, Rollo, p. 6.
[8] *Id.*; Petition for Review, Rollo, p. 6.
[9] Petition for Review, Rollo, p. 7.

2010-00000037/LOA 32527, informing petitioner that the report submitted by RO Sunga contains a recommendation for possible assessment of deficiency taxes for TY 2009.[10]

On September 14, 2012, respondent received an undated Notice of Informal Conference (Amended) [Amended NIC] issued by RDO Aninag, informing it that the report of the investigation conducted by RO Sunga pursuant to LOA 43A-2012-00000037 and LOA 43A-2012-00000591 showed that it has deficiency income tax (IT), value-added tax (VAT), expanded withholding tax (EWT), and improperly accumulated earnings tax (IAET). Respondent was requested to appear for an informal conference before RDO No. 43A on September 21, 2012.[11]

On September 20, 2012, respondent filed its reply to the Amended NIC through a letter dated September 19, 2012.[12]

On December 4, 2012, respondent received a PAN dated November 27, 2012, with attached Details of Discrepancies, from Mr. Amora of RR No. 7, informing the taxpayer that it had the following tax deficiencies, inclusive of interests, surcharges and compromise penalties:[13]

Tax Type	**Amount**
IT	₱ 7,231,193.19
VAT	10,561,734.83
EWT	386,367.42
IAET	1,158,894.68

The PAN was issued pursuant to LOA No. 32527 dated June 24, 2010 and SN: eLA201000026203 dated October 27, 2010. Another copy of the PAN was received by respondent on December 12, 2012.[14]

Referring to the PAN received on December 4, 2012 and disputing the proposed assessments contained therein, respondent filed its reply (Reply to PAN) via registered mail on December 19, 2012, which was received by RR No. 7 on January 11, 2013.[15]

Respondent also filed a reply to the PAN received on December 12, 2012, through a letter dated December 26, 2012, which was received by RR No. 7 on December 27, 2012.[16]

Thereafter, petitioner received Formal Letter of Demand, with attached Details of Discrepancies, and Final Assessment Notices (FLD/FAN) dated

[10] *Id.* at pp. 21-22.
[11] Decision, Rollo, p. 22.
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] Decision, Rollo, p. 22.
[16] Decision, Rollo, p. 23.

December 21, 2012, with Demand Letter No. 43A-B100-09 dated December 10, 2012, issued by Mr. Amora, assessing petitioner for deficiency taxes, as follows:[17]

TAX TYPE	BASIC TAX	25% SURCHARGE	INTEREST	TOTAL
IT	₱ 4,776,303.86	-	₱ 2,617,152.80	₱ 7,393,456.66
VAT	6,779,868.47	-	4,012,196.13	10,792,064.60
EWT	247,150.56	-	147,613.21	394,763.77
IAET	706,426.30	176,606.58	279,860.94	1,162,893.82
TOTAL	₱ 12,509,749.19	₱ 176,606.58	₱ 7,056,823.08	₱ 19,743,178.85

A compromise penalty for non/late filing/payment of IAET in the amount of ₱20,000.00 was also imposed. The FLD/FAN was issued pursuant to LOA No. 32527 dated June 24, 2010 and SN: eLA201000026203 dated October 27, 2010.[18]

On February 8, 2013, petitioner filed its protest to the FLD/FAN (Protest to FLD/FAN) addressed to Ms. Ceroma of the Assessment Division of RR No. 7.[19]

Thereafter, MOA No. 043A-0000766 dated April 1, 2013 was issued by RDO Aninag to RO Cruz and GS Cabel, referring the audit investigation of respondent's tax liabilities for TY 2009 pursuant to SN: eLA201000026203 dated October 27, 2010, for reinvestigation.[20]

On even date, respondent received a letter dated July 3, 2013 signed by RO Cruz, stating that respondent failed to submit documents to support its protest, thus, reiterating the assessment contained in the FLD/FAN and Demand Letter No. 43A-B100-09.[21]

On July 4, 2013, respondent received an *undated* letter issued by RDO Aninag informing it that RO Cruz and GS Cabel have been authorized to continue the audit investigation of its tax liabilities for TY 2009.[22]

Thereafter, on October 31, 2013, respondent received a Final Decision dated October 22, 2013, issued by Mr. Amora, now as Regional Director of RR No. 7, demanding payment for deficiency taxes per Demand Letter No. 43A-B100-09.[23]

On November 14, 2013, respondent filed a letter addressed to Mr. Amora, requesting for the immediate recall of the Final Decision on the

[17] *Id.*; Exhibit P-7, Division Docket, Vol. 2, pp. 854-858.
[18] *Id.*
[19] Exhibit P-11, Division Docket, Vol. 2, pp. 865-866.
[20] Decision, Rollo, p. 23.
[21] Decision, Rollo, p. 24.
[22] Decision, Rollo, pp. 23-24.
[23] Decision, Rollo, p. 24.

ground of lack of due process, avoidance of needless litigation, and erroneous assessment.[24]

CTA Third Division Proceedings

On December 2, 2013, alleging that the assessment was void, barred by prescription and that it was not liable for the deficiency taxes, respondent SCI filed a petition with the Court *a quo* praying that petitioner's Final Decision be cancelled and set aside.[25]

Upon notice and after an extension, petitioner filed his Answer on February 28, 2014, interposing the following defenses:[26]

(1) That the PAN and FLD/FAN contained the facts and the law on which the assessment was based;

(2) That LOA No. 32527 dated June 24, 2010 authorizing the investigation of petitioner's books of accounts and accounting records for TY 2009 was validly issued, and the same was converted to LOA-041-2010-00000037 SN: eLA201000026203 pursuant to RMO No. 62-2010 and RMO No. 69-2010;

(3) That the FLD/FAN was issued within the three (3)-year prescriptive period prescribed under Section 203 of the 1997 NIRC; and,

(4) That the assessment had become final and demandable for failure of petitioner to submit all relevant supporting documents within the sixty (60)-day period.

Respondent SCI and petitioner filed their Pre-Trial Briefs on April 7, 2014 and July 4, 2014, respectively.[27]

On August 26, 2014, after an extension for the filing of Joint Stipulation of Facts and Issues was granted by the Court *a quo*, the parties filed a Joint Motion to Admit Attached Joint Stipulation of Facts and Issues (Joint Motion) with the attached Joint Stipulation of Facts and Issues (JSFI). The Joint Motion was granted by the Court in an August 28, 2014 Order, and consequently admitted the attached JSFI.[28]

Accordingly, on September 3, 2014, a Pre-Trial Order was issued[29] and trial ensued thereafter.

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[24] *Id.*
[25] Division Docket, Vol. 1, pp. 6-22.
[26] Decision, Rollo, pp. 24-25.
[27] *Id.* at p. 25.
[28] *Id.*
[29] *Id.*

Respondent presented two (2) witnesses: (1) Ms. Deborah N. Rodrigo (Ms. Rodrigo), Sugar Craft, Inc.'s Managing Director-Vice President (VP)-Treasurer; and (2) Atty. Clifford E. Chua (Atty. Chua), the Independent Certified Public Accountant (ICPA).

Ms. Rodrigo's testimony is contained in her Amended Judicial Affidavit. She was presented as witness on September 29, 2014, October 2, 2014, and October 30, 2014.[30]

Upon motion and there being no objection from petitioner, Atty. Chua was commissioned as the ICPA, and was ordered to submit the ICPA Report within thirty (30) days from October 30, 2014 or until November 29, 2014.[31]

The ICPA Report and the Supplemental ICPA Report were filed on January 14, 2015 and February 27, 2015, respectively. Atty. Chua's Judicial Affidavit and Supplemental Judicial Affidavit were filed on January 30, 2015, and March 2, 2015, respectively. He was presented as witness on April 21, 2015, after two (2) resettings.[32]

Considering respondent SCI's manifestation that it will no longer present further evidence, the Court set a commissioner's hearing for the permanent marking of its exhibits on June 23, 2015, and granted it ten (10) days from June 23, 2015, or until July 3, 2015 to file its Formal Offer of Evidence (FOE).[33]

After a postponement, respondent SCI filed its FOE, offering Exhibits "P-40," "P-40-A," "P-1," "P-2," "P-4," "P-5," "P-6," "P-7," "P-8," "P-8-1," "P-9," "P-10," "P-10-1," "P-11," "P-12," "P-13," "P-14," "P-15," "P-16," "P-17," "P-18," "P19," "P-20," "P-21," "P-22," "P-23," "P-24," "P-25," "P-26," "P-27," "P-28," "P-29," "P-30," "P-31," "P-35," "P-156," "P-156-A," "P-157," "P-157-A," "P-158," "P-159," "P-160," "P-161," "P-161-A," "P-162," "P-162-A," "P-3," "P-41" to "P-54," "P-56" to "P-72," "P-73" to "P-105," "P-106" to "P-127," "P-128" to "P-144," "P-145" to "P-149," "P-150," "P-151," "P-152" to "P-152-10," "P-153," "P-154," and "P-155" inclusive of sub-markings, as evidence. This was resolved by the Court in a Resolution dated September 23, 2015, admitting all of the foregoing exhibits with some notations.[34]

On April 18, 2016, after two (2) resettings, petitioner CIR presented his first witness, RO Sunga, who testified through his Judicial Affidavit. During the May 30, 2016 hearing, petitioner CIR presented its second witness, RO Cruz, who also testified through his Judicial Affidavit.[35]

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[30] *Id.*
[31] Decision, Rollo, pp. 25-26.
[32] *Id.*
[33] *Id.*
[34] Decision, Rollo, pp. 26-27.
[35] Decision, Rollo, p. 27.

Thereafter, petitioner was granted until June 14, 2016, and later extended up to June 24, 2016, to file his FOE. Thereafter, on June 14, 2016, petitioner filed his FOE, offering as evidence Exhibits "R-1," "R-2," "R-2-a," "R-3," "R-4," "R-5," "R-6," "R-7," "R-8," "R-9," "R-10," "R-11," "R-12," "R-13," "R-14," "R-15," and "R-15-a."[36]

In a Resolution dated April 15, 2016, the Court resolved to admit all the offered exhibits, with the exception of Exhibit "R-2" for failure of the exhibit formally offered and identified to correspond with the document marked.[37]

After being granted an extension, on October 24, 2016, respondent SCI filed its Memorandum. However, petitioner CIR failed to file his memorandum per Records Verification Report issued by the Judicial Records Division on October 26, 2016.

On November 2, 2016, the Court promulgated a Resolution submitting the case for decision.

On August 16, 2017, the CTA Third Division promulgated the assailed decision which granted the petition and cancelled all the assessments.[38]

On September 6, 2017, the CIR filed a Motion for Reconsideration (*on the Decision of the Honorable Court dated 16 August 2017*), with SCI's Comment on Respondent's Motion for Reconsideration, which was denied by the Court *a quo* for lack of merit, in a December 4, 2017 Resolution.[39]

CTA En Banc Proceedings

On January 5, 2018, after an extension of fifteen (15) days,[40] the CIR filed his Petition for Review and appealed to the CTA *En Banc*.[41]

In a February 13, 2018 Resolution, petitioner CIR was directed to submit proof of service of his Petition for Review in accordance with Section 13, Rule 13 of the Rules of Court, within ten (10) days from notice.[42]

In a March 27, 2018 Resolution, the Court *En Banc* noted petitioner's Submission/Compliance with attached Affidavit of Service[43] and ordered the respondent SCI to files its comment within ten (10) days from notice.[44] ℛ

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[36] *Id.*
[37] *Id.*
[38] *Id.* at p. 47.
[39] Rollo, pp. 51-56.
[40] Motion for Extension of Time to File Petition for Review, Rollo, pp. 1-3; Minutes of January 9, 2018 *En Banc* Resolution, Rollo, p. 60-A.
[41] Rollo, pp. 4-16.
[42] *Id.* at pp. 62-64.
[43] *Id.* at pp. 65-67.
[44] *Id.* at pp. 69-70.

On April 26, 2017, respondent SCI filed its Comment in compliance with order of the Court.[45]

Accordingly, in a May 11, 2018 Resolution, the Court *En Banc* noted respondent's Comment and submitted the case for decision.[46]

THE ISSUE

The CIR petitions the Court *En Banc* to reverse the August 16, 2017 Decision of the CTA Third Division and order the respondent taxpayer to pay its deficiency taxes for taxable year 2009 for the amounts indicated in the Assessment Notice and raises a single issue for the Court's resolution:

> "Whether or not the assessment is void for lack of authority of revenue officer Delfin Sunga to conduct the audit investigation."[47]

THIS COURT'S RULING

We deny the CIR's petition for lack of merit.

After careful evaluation of the case, more particularly the issue touching on the LOA, this Court finds the deficiency tax assessments issued by petitioner CIR against the taxpayer to be intrinsically void and, therefore, should be cancelled and set aside. The invalidity of such deficiency tax assessments springs from the absence of authority on the part of the RO who conducted the examination of respondent's books of accounts and other accounting records.

One of the powers granted to the petitioner CIR under the National Internal Revenue Code of 1997, as amended (1997 NIRC) is the power to assess deficiency tax. Section 6(A) of the 1997 NIRC expressly provides:

> "SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —
>
> (A) *Examination of Returns and Determination of Tax Due.* — After a return has been filed as required under the provisions of this Code, <u>the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax:</u> *Provided, however*, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer. jr

[45] *Id.* at pp. 71-79.
[46] *Id.* at pp. 82-83.
[47] Petition for Review, Rollo, p. 7.

The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative.

xxx xxx xxx" *(Underscoring supplied)*

In the exercise of his assessment powers, the CIR is also empowered to conduct by himself the examination of any taxpayer, or he may authorize other tax officers to conduct such examination. Section 6(A) of the 1997 NIRC likewise vested the CIR's duly authorized representatives the power to authorize the examination of any taxpayer for the purpose of collecting the correct amount of tax. The term "duly authorized representative" under Section 6(A) of the 1997 NIRC which may authorize examination of taxpayers refers to a Revenue Regional Director, in accordance with Sections 10 and 13 of the 1997 NIRC. The term likewise refers to other tax officials with the rank equivalent to a division chief or higher, pursuant to the CIR's authority to delegate powers vested in him under Section 7 of the 1997 NIRC. The issuance of LOAs for the examination of taxpayers is *not* one of those enumerated powers which the CIR cannot delegate. Section 7 of the 1997 NIRC reads as follows:

"SEC. 7. *Authority of the Commissioner to Delegate Power.* — The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: *Provided, however,* That the following powers of the Commissioner shall not be delegated:

(a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;

(b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;

(c) The power to compromise or abate, under Sec. 204(A) and (B) of this Code, any tax liability: Provided, however, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and

> (d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept." *(Emphasis supplied)*

Section 10 of the 1997 NIRC, in enumerating the powers of a Revenue Regional Director include, among others, the power to issue letters of authority (LOA) for the examination of taxpayers within the region under his/her jurisdiction. Said provision reads in part:

> "SEC. 10. *Revenue Regional Director.* — Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional Director shall, within the region and district offices under his jurisdiction, among others:
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> xxx xxx xxx
>
> (c) Issue Letters of Authority for the examination of taxpayers within the region;
>
> xxx xxx xxx
>
> (h) Perform such other functions as may be provided by law and as may be delegated by the Commissioner." *(Underscoring supplied)*

On the other hand, Section 13 of the 1997 NIRC, in defining the authority of a revenue officer to conduct the examination of taxpayers for purposes of an assessment, provides as follows:

> "SEC. 13. *Authority of a Revenue Officer.* — Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself." *(Underscoring supplied)*

In relation to the foregoing provisions, Revenue Memorandum Order (RMO) No. 43-90 issued by the CIR identifies those officials who are authorized to issue and sign LOA. It may be noted that RDO Aninag of RDO 43A, who signed the MOA authorizing a *new* team of examiners to continue the examination and audit of respondent's tax liabilities begun by the previous team (i.e. RO Sunga and GS Cabel *in lieu* of RO Cruz and GS Amatorio), is *not* included therein. The relevant portion of the said issuance reads:

> "D. Preparation and issuance of L/As.
>
> xxx xxx xxx
>
> 4. For the proper monitoring and coordination of the issuance of Letter of Authority, the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner. For the exigencies of the service, other officials may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself." *(Underscoring supplied)*

To reiterate, only the CIR or his duly authorized representatives can authorize the examination of taxpayers for purposes of assessment of any deficiency taxes. Stated differently, unless duly authorized by the CIR himself or by his duly authorized representatives, an examination of the taxpayer by a revenue officer cannot be validly made.[48]

Considering that only the above officials are given the power to authorize examination of taxpayers for assessment purposes through the issuance of an LOA, logically speaking, it is only they who can effect any modification or amendment to a previously issued LOA, should the need therefor arises.

Parenthetically, RMO No. 43-90 provides that any reassignment or transfer of cases to other revenue officers shall require the issuance of a new LOA. Be that as it may, the same would not necessarily negate the authority of the CIR and his duly authorized representatives to effect amendment or modification of a previously-issued LOA instead of just issuing a new one in order for the assessment of a taxpayer to validly proceed. Note that RMO No. 43-90 itself does not state the legal effect in the event that the named revenue officers under the previously-issued LOA are transferred or reassigned and a new or replacement LOA is not issued. A duly issued LOA, valid in all other respects, does not automatically become invalid just because the revenue officers named therein happened to be reassigned or transferred. Indeed, to construe it otherwise would be tantamount to the curtailment of the statutorily granted authority of the CIR and its duly authorized representatives to authorize the audit of taxpayers by a mere RMO provision. It must be emphasized that an RMO is merely an internal issuance containing directives or instructions outlining procedures, techniques, methods, processes, operations, activities, work flow and the like which are necessary to carry out programs or to achieve policy goals and objectives.[49] As such, it does not grant any vested right to any taxpayer over any particular work procedure, which procedure is internal to the BIR and may change from time to time as the exigencies of service may require, or as may be allowed given particular

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[48] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.
[49] Revenue Administrative Order No. 001-12 dated April 2, 2012.

factual contexts, provided only that due process or statutory rights are not subverted.[50]

In the present case, the ROs *originally* named under LOA No. 32527 dated June 24, 2010 (i.e. RO Cruz and GS Amatorio) were different from those who continued the examination and audit of respondent's books of accounts and other accounting records for TY 2009 (i.e. RO Sunga and GS Cabel). It is clear, therefore, that RO Sunga and GS Cabel conducted the audit on the basis of December 7, 2011 MOA issued by RDO Aninag reassigning to them the examination of petitioner's books of accounts and other accounting records.

Furthermore, this Court holds that the December 7, 2011 MOA issued by RDO Aninag cannot validly grant RO Sunga and GS Cabel the authority to conduct said examination pursuant to LOA No. 32527 dated June 24, 2010. In his capacity as RDO of Revenue District Office No. 43A, Mr. Florante R. Aninag is bereft of any power to authorize the examination of taxpayers or to effect any modification or amendment to a previously issued LOA because, as discussed, only the CIR or his duly authorized representatives are granted such power.

Accordingly, the Court fully agrees with the Court *a quo* when it noted the infirmities which *invalidated* the authority of the new set of examiners:

> "RO Sunga attempted to justify his authority to conduct the audit investigation of petitioner's books by presenting MOA No. 043A-0000559 issued by RDO Aninag, authorizing him to continue the audit investigation to replace RO Cruz who was transferred to another RDO.
>
> There are two (2) things which the Court finds irregular, and at the same time relevant in determining RO Sunga's authority to conduct the audit investigation. First, the MOA was signed by the RDO, and not by the Regional Director. This is in contravention with the provision of Section 13 of the 1997 NIRC, which specifically provides that the authority of ROs must be signed by the Regional Director, or in the present case, as discussed earlier, by the OIC-Regional Director.
>
> Another point that deserves consideration is that no new LOA was issued specifically designating RO Sunga as the person to whom the case has been re-assigned. To reiterate, the LOA serves as proof that the person/s named therein is/are authorized to conduct the necessary audit investigation. xxx.
>
> xxx xxx xxx
>
> Absent the necessary issuance of a new LOA specifically designating RO Sunga to conduct the audit and examination of petitioner's

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[50] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 7948, June 5, 2014, penned by Associate Justice Ma. Belen M. Ringpis-Liban, concurred in by Associate Justices Lovell R. Bautista and Esperanza R. Fabon-Victorino.

books of accounts and accounting records for TY 2009, RO Sunga acted without authority when he conducted the audit investigation of petitioner's books. Accordingly, the assessment arising therefrom is a nullity. A void assessment bears no valid fruit."[51] (*Underscoring supplied*)

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[52] the Supreme Court already settled this point and held that absent any prior authority on the part of the revenue officers who conducted the audit/examination of taxpayer's books of accounts and other accounting records, the deficiency tax assessment arising therefrom is a nullity.

> "Based on Section 13 of the Tax Code, a Letter of Authority or LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer.
>
> > 'SEC. 6. **Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.** —
> >
> > (A) Examination of Returns and Determination of tax Due. — After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative **may authorize the examination of any taxpayer and the assessment of the correct amount of tax**: Provided, however, That failure to file a return shall not prevent the Commissioner from **authorizing the examination of any taxpayer**....' [Emphases supplied]
>
> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity." (*Underscoring supplied*)

Finally, estoppel is unavailing in this case. The CIR cannot invoke the principle of estoppel to bar respondent SCI from questioning the validity of the assessment. Estoppel cannot give validity to an act that is contrary to law.[53]

Considering the foregoing discussion, petitioner CIR has failed to validly argue against the holding of the Court *a quo* decreeing that the deficiency tax assessments, including surcharges, interests and compromise penalties be cancelled and set aside.

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[51] August 16, 2017 Decision, Rollo, pp. 46-47.
[52] G.R. No. 178697, November 17, 2010, 649 Phil. 519.
[53] *Development Bank of the Philippines v. Court of Appeals, et al.*, G.R. No. 118367, January 5, 1998, 284 SCRA 14.

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit. The August 16, 2017 Decision and the December 4, 2017 Resolution are hereby **AFFIRMED**.

SO ORDERED.

Juanito C Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(On Leave)

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

(please see separate concurring opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(On Leave)

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

SUGAR CRAFTS, INC.,
Respondent.

CTA EB NO. 1757
(CTA Case No. 8738)

Present:
DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:
MAY 06 2019 4:13 p.m.

x--x

SEPARATE CONCURRING OPINION

RINGPIS-LIBAN, *J.*:

I concur in the *ponencia* in denying the Petition for Review filed by the Commissioner of Internal Revenue ("Petitioner") for lack of authority of the examining Revenue Officer ("RO"). I submit that the basis for the same may be found under the National Internal Revenue Code ("NIRC") of 1997, as amended, and the laws on agency under the Civil Code.

The power of the Commissioner of Internal Revenue ("CIR") to conduct assessments is granted to him by virtue of Section 6 of the NIRC of 1997, as amended:

> "SEC. 6. **Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.** –

> (A) *Examination of Returns and Determination of Tax Due.* – After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax**: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer."[1]

Section 7 of the NIRC of 1997, as amended, likewise sets limits on which powers of the CIR may be delegated by him and which powers are to be exercised exclusively by him. The issuance of an LOA is not one of the non-delegable powers of the CIR, *viz:*

> "SEC. 7. **Authority of the Commissioner to Delegate Power.** – The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: Provided, however, That the following powers of the Commissioner shall not be delegated:
>
> (a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;
>
> (b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;
>
> (c) The power to compromise or abate, under Sec. 204 (A) and (B) of this Code, any tax liability: Provided, however, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (₱500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of finance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and
>
> (d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept."

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1 *Emphasis and underscoring supplied.*

On the contrary, issuing LOAs is a delegable power which the CIR may devolve to Revenue Regional Directors, as expounded on in Section 10 of the NIRC of 1997, as amended:

> "SEC. 10. **Revenue Regional Director.** – Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional director shall, within the region and district offices under his jurisdiction, among others:
>
> xxx
>
> (c) **<u>Issue Letters of authority for the examination of taxpayers</u> within the region;**
>
> xxx
>
> (h) **Perform such other functions as may be provided by law and as may be delegated by the Commissioner.**"[2]

An LOA is, in essence, a contract of agency. Article 1868 of the Civil Code defines agency as a contract where "a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter."

In the case of *Spouses Fernando and Lourdes Viloria v. Continental Airlines, Inc.*[3], the Supreme Court had the occasion to expound on the elements of agency, to wit:

> "The elements of agency are: (1) consent, express or implied, of the parties to establish the relationship; (2) the object is the execution of a juridical act in relation to a third person; (3) the agent acts as a representative and not for him/herself; and (4) the agent acts within the scope of his/her authority. **As the basis of agency is representation, there must be, on the part of the principal, an actual intention to appoint, an intention naturally inferable from the principal's words or actions. In the same manner, there must be an intention on the part of the agent to accept the appointment and act upon it.** Absent such mutual intent, there is generally no agency. It is likewise a settled rule that persons dealing with an assumed agent are bound at their peril, if they would hold the principal liable, to ascertain not only the fact of agency but also the nature and extent of authority, and in case either is controverted, the burden of proof is upon them to establish it."[4]

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2 *Emphasis and underscoring supplied.*

3 G.R. No. 188288, January 16, 2012.

4 *Emphasis supplied.*

In an LOA, the CIR is the principal - as he is the one mandated by the law to make assessments - and the Revenue Regional Director ("RRD"), his agent.

Now, may the RRD, the CIR's agent, appoint a sub-agent, in this case, the RO named in the LOA? Article 1892 of the Civil Code says that he can. The said provision states:

> "Art. 1892. **The agent may appoint a substitute if the principal has not prohibited him from doing so**; but he shall be responsible for the acts of the substitute:
>
> (1) When he was not given the power to appoint one;
> (2) When he was given such power, but without designating the person, and the person appointed was notoriously incompetent or insolvent.
>
> All acts of the substitute appointed against the prohibition of the principal shall be void. (1721)"[5]

This power to appoint a sub-agent necessarily includes the power to revoke the same. Thus, the authority given to RO Ricardo Cruz, Jr. who was originally named in the LOA may be revoked, transferred and reassigned to RO Delfin C. Sunga, for continuance of audit, by way of a Memorandum Referral or Memorandum of Assignment.

In fact, said document where such authority is transferred is equivalent to an LOA. Several reasons support this. *First*, the only directive under Section 13 of the NIRC of 1997, as amended,[6] which requires that assessment be done by ROs pursuant to an LOA, is that the grant of authority be done ***in writing***. In fact, an "[a]gency may be oral, unless the law requires a specific form."[7]

Second, although the document may not be entitled "Letter of Authority" but otherwise, it can contain all the elements necessary to establish a contract of agency between the CIR and the new RO. The primary consideration in determining the true nature of a contract is the intention of the parties. If the words of a contract appear to contravene the evident intention of the parties, the latter shall prevail. Such intention is determined not only from the express terms

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5 *Emphasis supplied.*

6 SEC. 13. Authority of a Revenue Officers. - subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, **pursuant to a Letter of Authority issued by the Revenue Regional Director**, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself." (*Emphasis supplied).*

7 Civil Code of the Philippines, Article 1869.

of their agreement, but also from the contemporaneous and subsequent acts of the parties.[8] The title of the contract does not necessarily determine its true nature.[9] In fact, this Court has, time and again, declared certain documents emanating from the CIR as his "Final Decision" on a Disputed Assessment based on the tenor of the words therein despite the absence of the words "Final Decision" in the title of the document.

In interpreting what a "Letter of Authority" is, as mentioned in Section 13 of the NIRC of 1997, as amended, the laws on contracts and agency embodied in the Civil Code simply cannot be ignored. Every effort must be exerted to avoid a conflict between statutes; so that if reasonable construction is possible, the laws must be reconciled in that manner.[10] Similarly, every new statute should be construed in connection with those already existing and all should be made to harmonize and stand together, if they can be done by any fair and reasonable interpretation. *Interpretare et concordare leges legibus, est optimus interpretandi modus*, which means that the best method of interpretation is that which makes laws consistent with other laws. Tax laws do not exist in a vacuum, and must be appreciated and applied with other laws such as the Civil Code.[11]

It is for the reasons above that, in my opinion, RO Sunga who conducted the examination of Respondent's records may be deemed authorized to do so, only if said letter or notice was signed by the Revenue Regional Director or his equivalent. In the instant case however, said letter was only signed by the Revenue District Officer Florante R. Aninag of RDO 43A. Therefore, RO Sunga was without authority to continue the audit.

From all the foregoing, I vote for the **DENIAL** of the Petition for Review filed by Petitioner.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[8] Heirs of Dr. Mario S. Intac and Angelina Mendoza Intac v. Court of Appeals and Spouses Marcelo Roy, Jr. and Josefina Mendoza-Roy and Spouses Dominador Lozada and Martina Mendoza-Lozada, G.R. No. 173211, October 11, 2012 *citing* Spouses Villaceran v. De Guzman, G.R. No. 169055, February 22, 2012; Ramos v. Heirs of Honorio Ramos, Sr., G.R. No. 140848, April 25, 2002, 381 SCRA 594, 601; Heirs of Policronio M. Ureta, Sr. vs. Heris of Liberato M. Ureta, G.R. Nos. 165748 & 165930, September 14, 2011 *citing* Lopez v. Lopez, G.R. No. 161925, November 25, 2009, 605 SCRA 358, 36.

[9] Adelfa Properties, Inc. v. Court of Appeals, G.R. No. 111238, January 25, 1995.

[10] Philippine Amusement and Gaming Corporation (PAGCOR) v. The Bureau of Internal Revenue, represented by Jose Mario Bunag, in his capacity as Commissioner of the Bureau of Internal Revenue, and John Doe and Jane Doe, who are persons acting for, in behalf or under the authority of Respondent, G.R. No. 215427, December 10, 2014, *citing* Lopez v. The Civil Service Commission, 273 Phil. 147, 152 (1991).

[11] Philippine International Trading Corporation v. Commission on Audit, G.R. No. 183517, June 22, 2010.